1. D.B. CIVIL WRIT PETITION NO.1701/2005
(Anmol Granites V/s Union of India and ors.)

2. D.B. CIVIL WRIT PETITION NO.1767/2005
(Chima Stone Creation V/s Union of India and ors.)

3. D.B. CIVIL WRIT PETITION NO.1771/2005
(Gogad Granites Pvt. Ltd. V/s Union of India and ors.)

4. D.B. CIVIL WRIT PETITION NO.1768/2005
(Gajendra Granites Pvt. Ltd. V/s Union of India and ors.)

5. D.B. CIVIL WRIT PETITION NO.1764/2005
(Saraf Grani Marmo Industries V/s Union of India and ors.)

6. D.B. CIVIL WRIT PETITION NO.1765/2005
(Shivam Granites V/s Union of India and ors.)

7. D.B. CIVIL WRIT PETITION NO.1766/2005
(Anupam Granites V/s Union of India and ors.)

8. D.B. CIVIL WRIT PETITION NO.1770/2005
(Shree Marudhar Granites, Pali V/s Union of India and ors.)

20.1.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P.VYAS

Mr.Rajendra Mehta, for the petitioner.
Mr.V.K. Mathur, for the respondents.

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Heard the learned counsel for the parties.

In all these writ petitions, common issue has been raised as to whether cutting and polishing of granite slabs and tiles from the block amounts to manufacture and the end product becomes subject to

charge of excise duty under the Central Excise Act, 1944.

The notices have been issued in all these cases to the respective petitioners that the Supreme Court in the case of Pratap Singh V/s CCE (2003 (156) ELT A-382) has upheld that cutting and polishing of granite slabs and tiles from the block amounts to be manufacture and therefore, details of manufactured commodity and the value of such commodity on clearance were sought from the assessee.

The petitioners in all these cases have contended that cutting of granites block into slabs and tiles and their polishing does not amount to manufacturing process as has been held by the Hon'ble Supreme in the case of Aman Marbles (2003) 58 RLT 595. Based on that premise, the petitioners were not liable to furnish details of value of clearances of the granite slabs and tiles cleared from factory site and other storage.

It is not in dispute that in Aman Marble case, the Hon'ble Supreme Court by speaking order has held that cutting and polishing of granite block into

slabs and tiles did not amount to an activity of manufacture to invite the levy of Excise Duty.

However, the learned counsel for the Revenue has referred to an order dismissing the SLP in the matter of Pratap Singh as reported in 156 ELT A382, which is information about the dismissal of SLP by the Supreme Court against the judgment of CEGAT. It is also not in dispute that the order dismissing the SLP was not a speaking order.

The contention is raised merely on the basis of catch-note framed by the editors of ELT which projects as if the Supreme Court has held that polished granite slabs and tiles produced from granite blocks are different commodity than block and hence the activity amounts to manufacture. However, in the body of note, it is only stated that SLP against the order of CEGAT has been dismissed. The findings referred to in catch note is obviously referable to editors summary of order of CEGAT.

The principle is well settled that dismissal of SLP by itself does not amount to precedent unless a speaking order is passed by laying down ratio of

decision. Dismissal of SLP even does not result in merger of the order of the Court or Tribunal against whose judgment leave to appeal is sought and final order continues to be of the subordinate court or Tribunal against whose order the SLP is sought.

In these circumstances, dismissal of SLP in Pratap Singh's case cannot have over-riding effect over the ratio laid down by Apex Court in Aman Marble's case holding by a reasoned order that cutting and polishing of granites into slabs and tiles did not amount to activity of manufacturing and binds all Tribunals in India. Consequently the notice issued by the respondents for treating the activities to be manufacturing activities contrary to the decision of Supreme Court in Aman Marbles Case cannot be sustained.

This Court while considering the show cause notices in the like circumstances vide its order dtd.1.12.2005 deciding D.B. Civil Writ Petition No.2029/2005 M/s Shanti Granites V/s UOI and ors. And D.B. Civil Writ Petition No.1769/2005 – Ratnam Granite and marble Pvt. Ltd V/s UOI and ors. has followed the decision rendered in Aman Marble's case

and has set aside the show cause notices issued for the limited period from 1.3.2002 to 26.4.2002.

Accordingly, these writ petitions are allowed and the impugned notices in all the cases are quashed.

No order as to costs.

(R.P.VYAS)J (RAJESH BALIA)J.

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